Application No. 09/933,567

REMARKS

Status of the Claims

After entry of the foregoing amendments, Claims 1, 3-5, 7-9, 11-13, and 63-71 are pending in the present application. Claims 1, 5, 9, 13, and 63 are the independent claims. Applicants have amended Claims 5 and 7-8 herein. No new matter has been added.

Unless explicitly stated otherwise, the amendments to the claims were not made for reasons substantially related to the statutory requirements for patentability. Furthermore, unless stated otherwise, the amendments to the claims were made simply to make express what had been implicit in the claims as originally worded and therefore are not narrowing amendments that would create any type of prosecution history estoppel.

Summary of the Office Action

In the Office Action, Claims 5 and 7-8 were rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Claims 1, 3-5, 7-9, 11-13, and 63-71 also were rejected as allegedly being unpatentable over U.S. Patent No. 6,285,983 to Jenkins ("*Jenkins*") and/or U.S. Patent No. 6,029,141 to Bezos et al. ("*Bezos*"). Applicants address the rejections below.

Claim Rejections under 35 U.S.C. 101

In the Office Action, Claims 5 and 7-8 were rejected under 35 U.S.C. 101 because the Examiner asserts that the claimed computer readable medium embodies a propagated signal transmission medium that allegedly does not fall within any of the four statutory classes of invention. Although Applicants respectfully disagree with this assertion and submit that Claims 5 and 7-8 were patentable as originally presented, Applicants have amended each of these claims herein to recite a <u>computer memory</u>, rather than a computer readable medium. Applicants note that, in at least U.S. Patent Application No. 09/923,285, the parent of the present application, the Examiner has admitted that a computer memory is patent-eligible subject matter. Accordingly, Applicants respectfully request that the Examiner withdraw the claim rejections under 35 U.S.C. 101.

-11-

Claim Rejections under 35 U.S.C. 102(e) and 103(a)

In the Office Action, the Examiner rejected Claims 1, 4-5, 8-9, 12-13, 63, and 65-69 under 35 U.S.C. 102(e) as allegedly being anticipated by *Jenkins*. The Examiner rejected Claims 3, 7, 11, 64, and 70-71 as allegedly being unpatentable over *Jenkins* and *Bezos*. Applicants respectfully traverse all of the foregoing rejections.

A.   Claim Interpretations

Applicants respectfully disagree with each of claim interpretations provided in paragraphs 10-12 of the Office Action. First, in paragraph 10 of the Office Action, the Examiner states,

> On page 5 of the specification, Applicant describes "a comprehensive information profile disparate sets of consumer data preferably include those data repositories prepared by consumer data collection companies such [as] ACNielsen of Stamford, Conn. [a]nd Information Resources, Inc. ("IRX") of Chicago, Ill. [a]s well as many other third-party data repositories . . . unique identifier may comprise the consumer's name, phone number, email address or any other suitable identifier."

Applicant notes that the quoted language in this paragraph is not found in Applicants' specification. Rather, it is found in Column 4, lines 41-53 of *Jenkins*. Accordingly, this language cannot properly be used to interpret any of Applicants' claims.

> Second, in paragraph 11 of the Office Action, the Examiner states,

> Jenkins discloses 'the marketing system . . . accesses data from a wide range of data repositories 15, . . . consumer profiles . . . for example, include e-commerce sites (e.g. Amazon.com or Cdnow). . .' Further, 'the consumer has provided permission for the marketer to generate a message' based on the marketer's access to the above repositories (column 7 lines 9-42). Therefore, the disclosure of Jenkins has been reasonably interpreted as being a type of 'exchange' as exemplified by Applicant."

Applicants respectfully disagree with this interpretation. In particular, although Applicants disagree that the consumer in *Jenkins* has "provided permission for the marketer to generate a message 'based on the marketer's access to the above repositories,'" Applicants submit that, even accepting this interpretation for the sake of argument only, *Jenkins* does not disclose, teach, or suggest at least the feature of an "exchange," as claimed in each of Applicants' independent Claims 1, 5, 9, and 13. Each of Applicants' independent Claims 1, 5, 9, and 13 defines an "exchange" as a "group of one or more servers that are authorized and configured to accept consumer profile information from a

-12-

particular information account <u>at the request of a consumer</u>." As Applicants understand, providing permission for a marketer to generate a marketing message is wholly different than <u>requesting</u> a group of one or more servers to accept consumer profile information from a particular information account.

Third, in paragraph 12 of the Office Action, the Examiner states,

> Figure 1 of Jenkins has been interpreted as a distributed network, and "[D]ATA RESPOSITORIES" (block 15) has been reasonably interpreted as the required "central data repository" because repositories 15 of these disparate sets of consumer data preferably include those data repositories prepared by consumer data collection companies such [as] ACNielsen of Stamford, Conn. [a]nd Information Resources, Inc. ("IRX") of Chicago, Ill.

Applicants respectfully disagree with this interpretation. Each of Applicants' independent Claims 1, 5, 9, and 13 specifies that the "central data repository" stores consumer profile information in a plurality of information accounts associated with a plurality of different consumers, logically associated with a plurality of exchanges, wherein each information account is associated with at least one exchange. Applicants submit that the data repositories of *Jenkins* do not store consumer profile information in information accounts logically associated with a plurality of <u>exchanges</u>, wherein each information account is associated with at least one exchange. Rather, as set forth above, *Jenkins* fails to disclose, teach, or suggest at least the feature of an exchange. Accordingly, the data repositories of *Jenkins* are not a "central data repository," as defined in Applicants' independent Claims 1, 5, 9, and 13.

Nor are the data repositories of *Jenkins* a "central data repository," as defined in Applicants' independent Claim 63. Independent Claim 63 specifies that the central data repository is operable for receiving consumer information elements from a host server and storing a plurality of <u>branded</u> information accounts, relating to a plurality of different consumers, each branded information account comprising a plurality of said consumer information elements, stored in a tagged data format, associated with a consumer and an identification of a <u>sponsor of the branded information account</u>. As set forth below, *Jenkins* is completely silent regarding branded information accounts and sponsors therefor. Accordingly, *Jenkins* fails to disclose, teach, or suggest at least the feature of a central data repository operable for storing such branded information accounts, wherein each branded information account comprises a plurality of consumer information elements associated

-13-

with a consumer and an identification of a sponsor of the branded information account, as recited in Applicants' independent Claim 63.

B.   Claim Rejections

Applicants respectfully traverse all of the claim rejections in the Office Action. In particular, Applicants submit that *Jenkins* and *Bezos* fail to disclose, teach, or suggest at least the features of:

(1) each information account being associated with at least one exchange, wherein an exchange comprises a group of one or more servers that are authorized and configured to accept the consumer profile information from a particular information account at the request of a consumer, as similarly recited in independent Claims 1, 5, 9, and 13;

(2) responding to requests from exchanges at the host server for consumer profile information in specific information accounts by retrieving some or all of the consumer profile information from said central data repository and conveying some or all of the consumer profile information to the requesting exchange, provided that the information account storing the consumer profile information is associated with the requesting exchange, as similarly recited in independent Claims 1, 5, 9, and 13; and

(3) a central data repository operable for storing a plurality of branded information accounts, each branded information account comprising a plurality of consumer information elements associated with a consumer and an identification of a sponsor of the branded information account, as recited in independent Claim 63.

In the Office Action, the Examiner cited *Jenkins* as allegedly disclosing these features. Applicants respectfully disagree.

1.   *Jenkins*

As Applicants understand, *Jenkins* is directed to marketing systems and methods that preserve consumer privacy. The system of *Jenkins* collects consumer behavior data from many sources of consumer data sets, including from e-commerce sites such as Amazon.com and CDnow, aggregator sited such as Yahoo and CompareNet, hub/community sites such as GeoCities, iMalls, and iVillage, special interest sites such as GolfWeb and WebMD, and data repositories prepared by consumer collection companies such as ACNielsen and Information Resources ("IRX"). (See Col. 4, lines 34-46; Col. 7, lines 9-18). While the data may be in many different formats and may include a variety of data elements, each data record preferably includes some data element that uniquely identifies an individual consumer. (See Col. 4, lines 48-51). This unique identifier may

-14-

comprise the consumer's name, phone number, email address or any other suitable identifier. (See Col. 4, lines 51-53).

Data records from disparate data sets are cleaned, aggregated, and abstracted to create uniformly-formatted individual records in an individual records database. (See Col. 4, lines 58-61). One or more marketers may access the system through communications facilities at a marketing server. (See Col. 5, lines 5-6). A classes database, comprising consumer class records, is generated on the marketing server by abstracting the individual records in the individual records database via a communications link. (See Col. 5, lines 6-10). The individual records may be abstracted by removing individual consumer identification information. (See Col. 5, lines 11-12). The class records could, for example, include consumer data sorted by zip code, income level, or preferred web portal. (See Col. 5, lines 12-14). The class records are preferably traceable to the individual records only by means of an index securely stored on a secure server, thus ensuring the privacy of the individual consumers. (See Col. 5, lines 16-19). Marketers using the system can create marketing profiles in a marketing profiles database for querying the classes database. (See Col. 5, lines 22-24).

According to one embodiment, the system enables a marketer to initiate an electronic offer from the secure server directly to a group of individual consumers without revealing the identity of any of the individual consumers to the marketer. (See Col. 5, lines 33-37). In this regard, a marketer requests that a specified offer be communicated through the system to individual consumers described by a particular marketing profile. (See Col. 5, lines 37-39). The marketing server provides the offer and the class records described by the particular marketing profile to the secure server. (See Col. 5, lines 40-42). To determine which individual consumers the offer is to be directed to, the system instructs the secure server to apply the index to the class records in order to reconstruct the appropriate individual records. (See Col. 5, lines 45-48).

According to one embodiment, the system then preferably communicates the offer to individual consumers through a communications facility, such as via an electronic mail (e-mail) module. (See Col. 5, lines 48-52). Alternatively, the communications facility may comprise a web server that communicates the offer to an individual consumer by serving a web page to the individual consumer in response to a browser hit by that consumer. (See Col. 5, lines 52-56).

-15-

a.   Independent Claims 1, 5, 9, and 13

With regard to Applicants' independent Claims 1, 5, 9, and 13, Applicants respectfully submit that *Jenkins* fails to teach or suggest at least the feature that any of the data records from the data repositories, the consumer class records, and the individual records are associated with at least one exchange. As described above and as set forth in each of Applicants' independent Claims 1, 5, 9, and 13, an exchange is a "group of one or more servers that are authorized and configured to accept consumer profile information from a particular information account at the request of a consumer." As Applicants understand, no entity in the system of *Jenkins*, including the marketer, is authorized and configured to accept consumer profile information from any of the data records from the data repositories, the consumer class records, and the individual records at the request of a consumer.

Applicants submit that *Jenkins* further fails to teach or suggest at least the feature of responding to requests from exchanges at a host server for consumer profile information in specific accounts by retrieving some or all of the consumer profile information from the central data repository and conveying some or all of the consumer information to the requesting exchange, provided that the information account storing the consumer profile information is associated with the requesting exchange, as similarly recited in independent Claims 1, 5, 9, and 13. As Applicants understand, *Jenkins* is completely silent regarding limiting access to consumer profile information to exchanges associated with an information account storing the consumer profile information. In fact, as Applicants understand, *Jenkins* fails to disclose, teach, or suggest limiting access to consumer information based on any relationship between the requesting party and the data record in which the information is stored.

Therefore, Applicants submit that *Jenkins* fails to disclose, teach, or suggest at least the features of: (1) each information account being associated with at least one exchange, wherein an exchange comprises a group of one or more servers that are authorized and configured to accept the consumer profile information from a particular information account at the request of a consumer; and (2) responding to requests from exchanges at the host server for consumer profile information in specific information accounts by retrieving some or all of the consumer profile information from said central data repository and conveying some or all of the consumer profile information to the

-16-

requesting exchange, provided that the information account storing the consumer profile information is associated with the requesting exchange, as similarly recited in independent Claims 1, 5, 9, and 13.

b.   Independent Claim 63

With regard to independent Claim 63, Applicants submit that *Jenkins* fails to teach or suggest at least the feature of a central data repository operable for storing a plurality of branded information accounts, wherein each branded information account comprises a plurality of consumer information elements associated with a consumer and an identification of a sponsor of the branded information account. In the Office Action, the Examiner cited Column 4, lines 41-49; Column 5, line 14; Column 6, lines 29-30; and Column 7, lines 9-18 of *Jenkins* as allegedly disclosing this feature. Applicants respectfully disagree.

As Applicants understand, the cited passages of *Jenkins* disclose that the system of *Jenkins* collects consumer behavior data from many sources of consumer data sets, including from e-commerce sites such as Amazon.com and CDnow, aggregator sited such as Yahoo and CompareNet, hub/community sites such as GeoCities, iMalls, and iVillage, special interest sites such as GolfWeb and WebMD, and data repositories prepared by consumer collection companies such as ACNielsen and Information Resources ("IRX"), and stores the data in individual records in an individual records database. (See Col. 4, lines 34-46; Col. 7, lines 9-18; Col. 5, lines). At the request of one or more marketers, data in the individual records may be abstracted into class records sorted by zip code, income level, or preferred web portal. (See Col. 5, lines 5-14).

Applicants respectfully submit that the Examiner has misequated this ability to sort data by preferred web portal with Applicants' claimed branded information account comprising consumer information elements associated with a consumer and an identification of a sponsor of the branded account. In particular, Applicants submit that the ability to sort data by preferred web portal in no way suggests that the data does, could, or should include an identification of a sponsor of a branded account in which the data is stored. Applicants further submit that a preferred web portal is not equivalent to a brand of an information account.

Therefore, Applicants submit that *Jenkins* fails to disclose, teach, or suggest at least the feature of a central data repository operable for storing a plurality of branded information accounts,

-17-

Application No. 09/933,567

wherein each branded information account comprises a plurality of consumer information elements associated with a consumer and an identification of a sponsor of the branded information account, as recited in independent Claim 63.

2.   *Bezos*

As Applicants understand *Bezos* is directed to an internet-based customer referral system. In the Office Action, the Examiner cited *Bezos* as allegedly disclosing certain of the features of dependent Claims 3, 7, 11, 64, 70, and 71. The Examiner did not rely on *Bezos* in forming the rejections of any of Applicants' independent claims. Accordingly, although Applicants submit that *Bezos* fails to disclose, teach, or suggest any of the features discussed above, Applicants will not specifically discuss the differences between the disclosure of *Bezos* and the features of Applicants' independent claims in this Response. Applicants reserve the right to address these differences in the future.

Dependent Claims

Each of Claims 3-4, 7-8, 11-12, and 64-71 depends directly or indirectly from one of the independent claims discussed above. Accordingly, for at least the reasons discussed above with respect to the independent claims, Applicants submit that the dependent claims are likewise patentable over at least *Jenkins* and *Bezos*. The dependent claims also recite additional features that further define the claimed invention over *Jenkins* and *Bezos*. Accordingly, Applicants request separate and individual consideration of each dependent claim.

Applicants have not addressed each specific rejection of the dependent claims because Applicants submit that the independent claims are allowable over the documents of record, as discussed above. Applicants have not acquiesced to any such rejections and reserve the right to address the patentability of any additional claim features in the future.

Conclusion

Applicants submit the foregoing as a full and complete response to the Office Action. Applicants submit that this application is in condition for allowance and respectfully request such

-18-

action. If any issues exist that can be resolved with an Examiner's Amendment or a telephone conference, please contact Applicants' undersigned attorney at 404.572.4874.

Respectfully submitted,

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-19-